

Chapter Twenty-eight

**ENVIRONMENTAL
PERMITS/CERTIFICATIONS**

BUREAU OF DESIGN AND ENVIRONMENT MANUAL

Chapter Twenty-eight
ENVIRONMENTAL PERMITS/CERTIFICATIONS

Table of Contents

<u>Section</u>	<u>Page</u>
28-1 GENERAL	28-1.1
28-2 FEDERAL PERMITS/CERTIFICATIONS	28-2.1
28-3 STATE PERMITS/CERTIFICATIONS	28-3.1
28-4 PROCEDURES/DOCUMENTATION FOR USE OF THE CATEGORICAL EXCLUSION NATIONWIDE SECTION 404 PERMIT	28-4.1
28-4.01 Background	28-4.1
28-4.02 Applicability	28-4.1
28-4.03 Procedures	28-4.1
28-4.03(a) General	28-4.1
28-4.03(b) CE Projects Potentially Eligible for Nationwide Permit...	28-4.2
28-4.03(c) CE Projects Ineligible for Nationwide Permit	28-4.3

Chapter Twenty-eight

ENVIRONMENTAL PERMITS/CERTIFICATIONS

28-1 GENERAL

Many activities performed by the Illinois Department of Transportation impact the environment, navigation, public land or private land. Depending upon the nature of the impact, the activity may require the Department to obtain a permit or certification. Some of these permits/certifications may be obtained during the planning phase of project development, and others may be obtained during the design or construction phase. Any necessary permit authorizations/certifications should be obtained before commencement of work requiring the permit/certification. Personnel involved in project development should be aware of the requirements for these permits/certifications to ensure that necessary authorizations and clearances are obtained in a timely manner to allow the work requiring the permit/certification to proceed as scheduled. As practical, the permit authorization/certification should be obtained close to the start date for the work to optimize the time frame available for accomplishing the work before the authorization expires. Districts must carefully monitor expiration dates for permit authorizations to ensure that any necessary extension or renewal request is processed in a timely manner to avoid non-compliance or delay in the work covered by the permit.

Chapter 28 briefly documents the basic information related to the permits/certifications which might be required for a project. Note that a joint application form (NCR Form 426) has been developed by the US Army Corps of Engineers (Corps), Illinois Environmental Protection Agency (IEPA), and Illinois Department of Natural Resources Office of Water Resources (OWR), which is used to apply for Section 10 and Section 404 permits from the Corps and for obtaining the related Section 401 Water Quality Certification from the IEPA. The form is also used for obtaining permits from the OWR for Construction in Floodways of Rivers, Lakes, and Streams and for work affecting public waters. The current version of the joint application form is available on the websites for the Chicago, Rock Island (lead Corps District for Illinois) and St. Louis Corps Districts, and the OWR website. Districts also may contact the Corps, IEPA, or OWR to obtain the current version of the joint application form.

Figure 28-1.A presents and explains the format used for describing each Federal or State permit/certification. The descriptions of each permit or certification are presented in Sections 28-2 and 28-3. Figure 28-1.B identifies the address for each agency from whom a permit or certification is required.

Permit/Certification: Identification of the short or common name typically used for the permit/certification.

Responsible Agency: Identification of the agency responsible for evaluating permit/certification applications and for issuing the permit or certification.

Responsible IDOT Unit: Identification of the Department unit which must obtain the permit/certification.

Legal Reference: Identification of the legal authority for the permit/certification.

Purpose: Identification of the basic intent of the permit/certification.

Applicability: Identification of the type of activity that dictates the need for the permit/certification.

Permit/Certification Information Needs: Identification of the basic information needed for the submission of the permit or certification application.

FORMAT FOR PERMIT/CERTIFICATION INFORMATION

Figure 28-1.A

<u>Federal</u>	<u>State</u>
<u>Corps of Engineers</u>	<u>Illinois Environmental Protection Agency</u>
U.S. Army Corps of Engineers Chicago District 111 North Canal Street, Suite 600 Chicago, Illinois 60606-7206 (312) 846-5530	Illinois Environmental Protection Agency Bureau of Water DWPC Permit Section #15 1021 North Grand Avenue East P.O. Box 19276 Springfield, Illinois 62794-9276 (217) 782-0610
U.S. Army Corps of Engineers Rock Island District Clock Tower Building P.O. Box 2004 Rock Island, Illinois 61204-2004 (309) 794-5371	Illinois Environmental Protection Agency Bureau of Air 1021 North Grand Avenue East P.O. Box 19276 Springfield, Illinois 62794-9276 (217) 524-0636
U.S. Army Corps of Engineers St. Louis District 1222 Spruce Street St. Louis, Missouri 63103-2833 (314) 331-8575	Illinois Environmental Protection Agency Bureau of Land Permit Section 1021 North Grand Avenue East Springfield, Illinois 62794-9276 (217) 524-3300
U.S. Army Corps of Engineers Louisville District P. O. Box 59 Louisville, Kentucky 40201-0059 (502) 582-5452	<u>IDNR Office of Water Resources</u> <i>(For Lake Michigan)</i> Illinois Department of Natural Resources Office of Water Resources 36 South Wabash, Suite 1415 Chicago, Illinois 60603 (312) 793-3123 or (312) 793-3126
U.S. Army Corps of Engineers Memphis District 167 North Main, B-202 Memphis, Tennessee 38103-1894 (901) 544-3005	<i>(For Cook, Lake, McHenry, DuPage, Kane & Will Counties)</i> Illinois Department of Natural Resources Office of Water Resources – Region 2 Office 2050 West Stearns Road Bartlett, Illinois 60103 (847) 608-3100
<u>Coast Guard</u>	<i>(For the remainder of the State)</i> Illinois Department of Natural Resources Office of Water Resources One Natural Resources Way Springfield, Illinois 62702-1271 (217) 782-3863
Commander Attn: Bridge Branch Eighth Coast Guard District Hale Boggs Federal Building 500 Poydras Street New Orleans, LA 70130 (504) 671-2128	<u>Office of State Fire Marshal</u> State Fire Marshal 1035 Stevenson Drive Springfield, Illinois 62703 (217) 785-0969
Commander Attn: Bridge Branch Ninth Coast Guard District 1240 East Ninth Street Cleveland, Ohio 44199 (216) 902-6045	

PERMIT AGENCY OFFICES**Figure 28-1.B**

28-2 FEDERAL PERMITS/CERTIFICATIONS

IDOT is responsible for obtaining several Federal permits/certifications as required on individual projects. This section briefly discusses the identification, applicability, and information needs of each permit/ certification. The Federal permits/certifications are:

1. Section 404 Permit. This permit is obtained from the Corps for the discharge of dredge or fill material into waters of the United States, including wetlands.
2. Section 9 Permit. This permit is obtained from the US Coast Guard (USCG) for construction of bridges or causeways over navigable waters of the United States.
3. Section 10 Permit. This permit is obtained from the Corps for structures or work (other than bridges and causeways) affecting the navigable waters of the United States.
4. Section 401 Water Quality Certification. This certification is obtained from the IEPA and is required in conjunction with a Section 404 permit (i.e., the IEPA must either approve or waive the water quality certification as a condition for issuance of an individual Section 404 permit or for use of a nationwide or regional Section 404 permit).
5. Section 402 National Pollutant Discharge Elimination System (NPDES) Point-Source Permit. This permit is obtained from the IEPA for projects such as rest areas that involve a point-source discharge of pollutants into waters of the United States.
6. Section 402 NPDES Construction Permit. This permit is administered by the IEPA and applies to projects that will involve clearing, grading, and excavation activities that result in the disturbance of one acre (4047 m²) or more of total land area.

Permit: Section 404

Responsible Agency: United States Army Corps of Engineers

Responsible IDOT Unit: District

Legal Reference: Section 404 of the *Federal Water Pollution Control Act* (1972), as amended by the *Clean Water Act* (1977 & 1987): 33 USC 1251-1376, DOT Order 5660.1A; 23 CFR 650, Subpart B; 33 CFR 209, 320-323, 325, 328, 330; 40 CFR 121-125, 129-131, 135-136, and 230-231.

Purpose: To restore and maintain the chemical, physical, and biological integrity of the Nation's waters through prevention, reduction, and elimination of pollution.

Applicability: Permit required for any discharge of dredged or fill material into waters of the United States, including wetlands that are subject to Corps jurisdiction. See the following references, available on the Corps Headquarters website, for guidance on jurisdiction under Section 404:

- Regulatory Guidance Letter 07-01 "Practices for Documenting Jurisdiction under Section 404 of the *Clean Water Act* (CWA) and Sections 9 & 10 of the *Rivers and Harbors Act of 1899*," and
- Regulatory Guidance Letter 08-02 "Jurisdictional Determinations."

Permit Information Needs: The list below indicates the typical items of information required for an individual Section 404 permit. Some Corps districts may require additional items of information (e.g., photographs of the project site, quantity calculations for fill activities, documentation of coordination with Soil and Water Conservation Districts regarding proposed erosion and sediment control measures):

1. Name and address of permit applicant.
2. Complete, detailed description of the proposed activity, its purpose, intended use, and drainage area of the watershed to the downstream limit of the project. The description should include information on temporary stream crossings, work pads, temporary bypass channels, cofferdams, etc., that will be involved in the construction work requiring a Section 404 permit. For dredging and fill activities, describe the location, type, composition, and quantity of material to be dredged/filled, method of dredging/filling, and method of transportation to disposal/fill site. Also, describe the disposal/fill site by including the location, quantity of material it will hold, composition of receiving soil, and method of containment. Identify any practical alternatives that would fulfill the objectives of the proposed project and explain why the final proposal was selected.
3. Location of the proposed activity, including legal description.
4. If applicable, name, address, and title of authorized agent.
5. Names, addresses, and telephone numbers of all adjoining and potentially affected property owners, including the property involved with the permit action, if different from the applicant.

6. Date activity is proposed to commence.
7. Estimated time of construction.
8. Indication of whether any portion of the activity for which authorization is sought is complete.
9. List of all approvals or certifications required by other Federal, interstate, State, or local agencies for any structures, construction, discharges, deposits, or other activities described in the application.
10. Indication of whether any agency has denied approval for the activity described in the application or for any activity directly related to the activity described.
11. Engineering details (e.g., limit of fill activity, amount of fill, area taken, linear feet (meters) of disturbance, erosion control plan, disposal of waste material).
12. Copy of EIS or EA, if prepared, describing environmental impacts (e.g., soils, water quality, groundwater, wetlands, fish, wildlife, floodplains).
13. Mitigation plan.
14. Project drawings (8½ inches x 11 inches (216 mm x 279 mm)), including a vicinity map, plan view of the project and a cross section view of the project.
15. Environmental signoffs.

In addition to individual Section 404 permit authorizations, certain activities may be authorized under a regional or nationwide permit, provided they meet the conditions for use of the permit. Regional permits are addressed in public notices issued by the applicable Corps district(s).

The Chicago Corps District has issued Regional Permits for use in Cook, DuPage, Kane, Lake, McHenry, and Will Counties. The Chicago Corps District's Regional Permit Program includes several permits that may be applicable for IDOT project activities. These include the following:

- *Regional Permit 3 – Transportation Projects,*
- *Regional Permit 4 – Minor Discharges and Minor Dredging,*
- *Regional Permit 5 – Wetland/Stream Restoration and Enhancement,*
- *Regional Permit 7 – Temporary Construction Activities,*
- *Regional Permit 10 – Bank Stabilization, and*
- *Regional Permit 12 – Bridge Scour Protection.*

Information about these Regional Permits is available on the Chicago Corps District website.

The Rock Island Corps District has issued Regional Permits for use anywhere in the State of Illinois. Regional Permits that may be applicable for IDOT project activities include the following:

- *Regional Permit 16 – Bank Stabilization Activities, and*
- *Regional Permit 26 – Emergency Reconstruction and Repair Activities for Flood Damaged Areas.*

Information about these Regional Permits is available on the Rock Island Corps District website.

The nationwide permits are published in the Federal Register and are available on the Corps Headquarters website. BDE disseminates current nationwide permit information from the Federal Register via a BDE Information Memorandum.

The information needs, applicability provisions, processing procedures, and conditions applicable to regional and nationwide permits vary according to the specific permit involved. Some Corps districts require submittal of essentially the same information for nationwide or regional permits as for individual permits.

For Nationwide Permit 14, which addresses Linear Transportation Projects, the description of the project provided to the Corps should include information on temporary stream crossings, work pads, temporary bypass channels, cofferdams, etc., that will be involved in the construction work, to the extent that this information is known or can be anticipated at the time of the permit submittal. If these temporary work features are addressed for permitting purposes after the initial permit submittal, they may be eligible for coverage under Nationwide Permit 33 – “Temporary Construction, Access, and Dewatering.” It should be recognized that time will be required to obtain separate permit authorization for the additional temporary work items. This time factor should be anticipated and factored into the project schedule. To minimize potential disruption of the project implementation schedule, districts can include in the original permit submittal, information reflecting their best estimate of the type, size, and location of temporary work features needed for construction of the bridge/culvert requiring the 404 permit. To the extent that this information adequately covers the temporary work features that the contractor ultimately proposes, it will eliminate the need for having the contractor obtain a separate permit authorization for the temporary work and will avoid the associated potential for delays in project implementation.

For Nationwide Permit 23, which covers Approved Categorical Exclusions, the Federal Highway Administration (FHWA) and the Corps have an agreement that applies additional requirements beyond those addressed in the Federal Register notice for the nationwide permits. Section 28-4 provides a discussion of these special requirements applicable to Nationwide Permit 23.

Permit: Section 9 Navigable Waters

Responsible Agency: United States Coast Guard

Responsible IDOT Unit: Bureau of Bridges and Structures

Legal Reference: Section 9 of the *Rivers and Harbors Act* of 1899; 33 USC 401, et seq, as amended and supplemented; 23 CFR part 650, Subpart H; and 33 CFR 114-115.

Purpose: To ensure that there will be no interference to navigation on the navigable waterways of the United States.

Applicability: Permit required for the construction, modification, replacement, or removal of any bridge or causeway over a navigable waterway.

Permit Information Needs: Permit application for Section 9 requires:

1. Name and address of permit applicant.
2. Name of waterway to be bridged.
3. Bridge location (miles (kilometers) above mouth of waterways; nearest city, county).
4. Estimated cost of bridge.
5. Estimated cost of low level bridge at this location.
6. List of property owners adjacent to bridge and its approaches.
7. Cubic yards (cubic meters) of material to be excavated and filled below the 100-year flood contours.
8. Environmental compliance documentation.
9. Any required State permits or a statement that none are required.
10. Evidence of Section 401 water quality certification for the project.
11. Statement concerning planned disposition of any bridge(s) to be removed.
12. Statement that old bridge will be completely removed unless the Corps has approved retention of the bridge or portions of the bridge for purposes other than a bridge or, unless all parts of the old bridges are to be removed at least to natural ground and/or riverbed, in which case, cut-off elevations may be submitted for approval.
13. Plans of existing bridge showing length, width and number of travel lanes, dimension horizontal clearance in channel span(s), elevations of low steel in channel spans, graphic scale, north arrow, name of bridge and year constructed, and owner of bridge.
14. Vicinity map* (small scale) showing location of proposed bridge in relation to major highways and rivers, major communities, and 4(f) lands, if any.
15. Location map* (large scale) showing all highways and rivers; showing local communities; showing existing bridges (with any to be removed labeled as such), docks, locks, dams, dikes, etc.; 4(f) lands, if any; and showing a flow arrow and soundings in feet (meters) below established government datum planes (usually normal pool).
16. Elevation view* of proposed bridge from abutment to abutment showing dimension minimum vertical clearance in navigation span(s) above normal pool or record low water; 2% flowline elevation, 100-year flood, and record high water; elevation of low steel in channel span(s) at channelward faces of channel piers, 25 ft (7.6 m) from each pier, and

at center of span; cross section of watercourse; and, if bridge is moveable, dimension vertical clearance in open and closed positions.

17. Plan view* of proposed bridge from abutment to abutment showing length of bridge; width of bridge and number of travel lanes; dimension distance between bridges for dual bridges; angle between axis of bridge and channel or flow of river, if applicable; dimension size and location of any proposed pier protection cells, sheer fences, fenders, etc.; dimension minimum horizontal clearance between channel piers, or pier protection, as measured normal to the axis of the channel or flow of the river.

*Samples of these drawings are included in Section 2 of the *IDOT Bridge Manual*.

Permit: Section 10 Navigable Waters

Responsible Agency: United States Army Corps of Engineers

Responsible IDOT Unit: District

Legal Reference: Section 10 of the *Rivers and Harbors Act* of 1899; 33 USC 401, et seq, as amended and supplemented; 23 CFR part 650, Subpart H; 33 CFR 320, 322, 323, 325, 326, 327, 329, and 330.

Purpose: To protect and preserve the navigable waterways of the United States against any degradation in water quality.

Applicability: Permit required for structures or work (other than bridges or causeways) affecting a navigable waterway. Examples of work include dredging, channelization, filling, and construction of pier protection cells.

Permit Information Needs: Permit application for Section 10 requires:

1. Name and address of permit applicant.
2. Complete, detailed description of the proposed activity, including its purpose, intended use, and drainage area of the watershed to the downstream limit of the project. For dredging and fill activities, describe the location, type, composition, and quantity of material to be dredged/filled, method of dredging/filling, and method of transportation to disposal/fill site. Also, describe the disposal/fill site by including the location, quantity of material it will hold, composition of receiving soil, and method of containment. Identify any practical alternatives that would fulfill the objectives of the proposed project and explain why the final proposal was selected.
3. Location of the proposed activity, including legal description.
4. If applicable, name, address, and title of authorized agent.
5. Names, addresses, and telephone numbers of all adjoining and potentially affected property owners, including the property involved with the permit action, if different from the applicant.
6. Date activity is proposed to commence.
7. Estimated time of construction.
8. Indication of whether any portion of the activity for which authorization is sought is complete.
9. List of all approvals or certifications required by other Federal, interstate, State, or local agencies for any structures, construction, discharges, deposits, or other activities described in the application.
10. Indication of whether any agency has denied approval for the activity described in the application or for any activity directly related to the activity described.
11. Engineering details (e.g., limit of fill activity, amount of fill, area taken, linear feet (meters) of disturbance, erosion control plan, disposal of waste material).
12. Copy of EIS or EA, if prepared, describing environmental impacts (e.g., soils, water quality, groundwater, wetlands, fish, wildlife, floodplains).
13. Mitigation plan.

14. Project drawings (8½ inches x 11 inches (216 mm x 279 mm)), including a vicinity map, plan view of the project and a cross section view of the project.
15. Environmental signoffs.

Certification: Section 401 Water Quality Certification

Responsible Agency: Illinois Environmental Protection Agency

Responsible IDOT Unit: District

Legal Reference: Section 401 of the *Federal Water Pollution Control Act* (1972), as amended by the *Clean Water Act* (1977 & 1987): 33 USC 1251-1376, DOT Order 5660.1A; 23 CFR 650, Subpart B; 33 CFR 209, 320-323, 325, 328, 329; 40 CFR 121-125, 129-131, 133, 135-136, and 230-231.

Purpose: To restore and maintain the chemical, physical, and biological integrity of the Nation's waters through prevention, reduction, and elimination of pollution.

Applicability: Certification or a waiver of certification is required in conjunction with any Federal permit or license to conduct any activity which may result in any discharge into waters of the United States.

Permit Information Needs: The information needed for the 401 water quality certification review generally is the same as that which is required in the application for the Federal permit involved. The information is provided to IEPA via a copy of the appropriate permit application form. Refer to the information needs described in this section for Section 404, Section 9, Section 10, and Section 402 permits.

For discharges that require an individual Section 401 water quality certification/waiver (i.e., not covered by a blanket 401 certification/waiver), 35 Ill. Adm. Code 302.105 requires the Illinois EPA to conduct an "anti-degradation assessment" for the proposed discharge. The purpose of the assessment is to evaluate the effect of the discharge (i.e., increase in pollutant loadings) and ensure that it will not cause water quality standards to be exceeded. When an anti-degradation assessment is necessary, IEPA may require the following information from the applicant for purposes of the assessment:

- identification and characterization (e.g., current physical, biological, chemical conditions) of the water body affected by the proposed project and the water body's existing uses;
- quantity of the pollutant load increase to the water body;
- potential impacts of the proposed project on the water body;
- purpose and anticipated benefits of the proposed project;
- assessment of the alternatives to the proposed project that will result in a reduced pollutant load to the water body, no load increase or minimal environmental degradation. Alternatives that result in no discharge to the water body and changes in the location of the activity must be addressed in the submission; and/or
- proof that a copy of the application was provided to the Illinois Department of Natural Resources.

As a part of the public notice process for the individual 401 water quality certification, IEPA will publish a fact sheet containing information on the anti-degradation assessment.

Permit: Section 402 National Pollutant Discharge Elimination System (NPDES) Point-Source Permit

Responsible Agency: US Environmental Protection Agency (USEPA) through the IEPA

Responsible IDOT Unit: District

Legal Reference: Section 402 of the *Federal Water Pollution Control Act* (1972), as amended by the *Clean Water Act* (1977 & 1987): 33 USC 1251-1376, DOT Order 5660.1A; 23 CFR 650, Subpart B; 40 CFR 121-125, 129-131, 133, and 135-136.

Purpose: To restore and maintain the chemical, physical, and biological integrity of the nation's waters through prevention, reduction, and elimination of pollution.

Applicability: Required for all point-source discharges (other than those addressed by the Section 404 Permit) into the Nation's waters (e.g., for rest areas).

Permit Information Needs: Permit application for Section 402 NPDES Point-Source requires:

1. USEPA Identification Number.
2. Facility name and address.
3. Pollutant characteristics (e.g., hazardous wastes, injection of fluids, air, agricultural, industrial wastes).
4. Facility contact and mailing address.
5. Facility location.
6. Standard Industrial Classification (SIC) Code.
7. Operator (e.g., name, Federal/State/private).
8. Existing environmental permits.
9. Map of area (e.g., topographic, locations of existing/proposed intakes and discharges, surface water bodies).
10. Nature of business.
11. Receiving waters (e.g., latitude/longitude).
12. Discharge date.
13. Type of waste.
14. Effluent characteristics (e.g., type of pollutants, maximum daily and average daily discharges).
15. Indication of intermittent or seasonal discharge.
16. Treatment system description.

Permit: Section 402 National Pollutant Discharge Elimination System (NPDES) Construction Permit

Responsible Agency: USEPA through the IEPA

Responsible IDOT Unit: Central Office disseminates information on general permit to district; district files Notice of Intent to use permit. *Note: Contractor must also sign Contractor Certification Statement.*

Legal Reference: Section 402 of the *Federal Water Pollution Control Act* (1972), as amended by the *Clean Water Act* (1977 & 1987); 33 USC 1251-1376, DOT Order 5660.1A; 23 CFR 650, Subpart B; 40 CFR 121-125, 129-131, 133, 135-136

Purpose: To restore and maintain the chemical, physical, and biological integrity of the Nation's waters through prevention, reduction, and elimination of pollution.

Applicability: Required for construction activities involving clearing, grading, and excavation activities that disturb one acre (4047 m²) or more of land area.

Permit Information Needs: Section 402 NPDES Construction Permit requires:

1. Mailing address and location of construction site, if available, and latitude and longitude of the approximate center of the site.
2. The owner's name, address, telephone number, and status as Federal, State, private, public, or other entity.
3. The name, address, and telephone number of the general contractor(s) that has been identified at the time of the Notice of Intent (NOI) submittal.
4. The name of the receiving water(s) or, if the discharge is through a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the ultimate receiving water(s).
5. The number of any NPDES permit for any discharge (including non-storm water discharges) from the site that is currently authorized by an NPDES permit.
6. A yes or no indication of whether the owner or operator has existing quantitative data that describes the concentration of pollutants in storm water discharges.
7. A brief description of the project.
8. Contract/plan information including: contract number, letting date, item number, page numbers in plans where permit-related information can be found and sheet numbers where erosion and sediment control plans can be found.
9. Estimated timetable for major activities.
10. Estimates of the number of acres (hectares) of the site on which soil will be disturbed.
11. Storm Water Pollution Prevention Plan, including site description (e.g., map, nature of construction activity, area disturbed), erosion and sediment controls, storm water management plan, maintenance of site, inspection schedule, reports, and identification of the contractors/sub-contractors.

28-3 STATE PERMITS/CERTIFICATIONS

IDOT is responsible for obtaining several State permits/certifications as required on individual projects. This section discusses the identification, applicability, and information needs of each permit/certification. The State permits/certifications are:

1. Construction in Floodways of Rivers, Lakes, and Streams. This permit is obtained from the Illinois Department of Natural Resources, Office of Water Resources (OWR) for construction in the floodway of identified streams serving a tributary area of 640 acres (259 hectares) or more (urban) or 6400 acres (2590 hectares) or more (rural).
2. Regulation of Public Waters. This permit is obtained from the OWR for construction in those rivers, lakes, streams, and waterways considered public waters.
3. Floodway Construction in Northeastern Illinois. This permit is obtained from the OWR for new construction within the regulatory floodways of rivers, lakes, and streams in Cook, DuPage, Kane, Lake, McHenry, and Will counties excluding the City of Chicago.
4. Open Burning of Landscape Waste Generated by Land Clearing Activities. This permit is obtained from the IEPA for any proposed open burning of landscape waste generated from land clearing activities precipitated by road construction projects.
5. Supplemental Waste Stream Permit. This permit is obtained from the IEPA to allow a disposal facility to accept special waste generated by project involvement.
6. Resource Conservation and Recovery Act (RCRA) Permit. This permit is obtained from the IEPA for any project involvement with hazardous wastes for which the Department will conduct remedial activities.
7. Underground Storage Tank (UST) Permit. This permit is obtained from the Office of the State Fire Marshal (OSFM) for removing any underground storage tank.

Permit Name: Construction in Floodways of Rivers, Lakes, and Streams

Responsible Agency: Illinois Department of Natural Resources, Office of Water Resources

Responsible IDOT Unit: Bureau of Bridges and Structures (for bridges) or district (for culverts, embankments, storm sewers, or other construction within the flood plains of applicable streams and rivers).

Legal Reference: Authorized by Sections 23, 29, and 30 of the *Rivers, Lakes, and Streams Act* 615 ILCS 5/23, 29a and 30. Implementing rules in 17 Ill. Adm. Code 3700.

Purpose: To protect the rights, safety, and welfare of private and public landowners through the regulation of floodway development.

Applicability: All rivers, lakes, and streams under the jurisdiction of the OWR except those in the counties of Cook, Will, DuPage, Kane, Lake, and McHenry for which floodway limits have been defined pursuant to 92 Ill. Adm. Code 708. A permit is required for construction in the floodway of streams serving a tributary area of 640 acres (259 hectares) or more in an urban area or in the floodway of a stream serving a tributary area of 6400 acres (2590 hectares) or more in a rural area.

Permit Information Needs: Refer to Appendix I of the *IDOT Drainage Manual*.

Permit Name: Regulation of Public Waters

Responsible Agency: Illinois Department of Natural Resources, Office of Water Resources

Responsible IDOT Unit: Bureau of Bridges and Structures (for bridges) or district (for culverts, embankments, storm sewers, or other construction affecting public waters).

Legal Reference: Authorized by the *Rivers, Lakes, and Streams Act* 615 ILCS 5. Implementing rules in 17 Ill. Adm. Code 3704.

Purpose: To protect the public's interests, rights, safety, and welfare in the State's public bodies of water by preventing construction or other uses that would:

- obstruct or interfere with the navigability of any public body of water;
- encroach on any public body of water; or
- impair the rights, interests, or uses of the public in any public body of water or in the natural resources thereof.

Applicability: The permit requirements are applicable to those lakes, rivers, streams, and waterways that are considered public waters (listed in the Ill. Adm. Code 92-704, Appendix A).

Permit Information Needs: Refer to Appendix I of the *IDOT Drainage Manual*.

Permit Name: Floodway Construction in Northeastern Illinois

Responsible Agency: Illinois Department of Natural Resources, Office of Water Resources (By agreement with OWR, the Bureau of Bridges and Structures issues floodway construction permits for highway projects in the District One area, excluding the City of Chicago.)

Responsible IDOT Unit: Bureau of Bridges and Structures (for bridges) or district (for culverts and all other construction in regulatory floodways).

Legal Reference: Authorized by Section 18g of the *Rivers, Lakes, and Streams Act* 615 ILCS 5/18g. Implementing rules in 17 Ill. Adm. Code 3708.

Purpose: To regulate construction and filling in the regulatory floodway of rivers, lakes, and streams of Cook, DuPage, Kane, Lake, McHenry, and Will Counties, excluding the City of Chicago, so that periodic inundation will not:

- pose a danger to the general health and welfare of the user,
- require the expenditure of public funds,
- require the provision of public resources or disaster relief services, or
- result singularly or cumulatively in greater flood damages or potential flood damages due to increases in flood stage or velocities or loss of flood storage.

Applicability: A permit under this provision is required for construction, including replacement structures, roadway widening, etc., within the regulatory floodways in Cook, DuPage, Kane, Lake, McHenry, and Will Counties, except for those areas that are within the City of Chicago. A permit is not required for repair, remodeling, or maintenance of buildings or structures in existence as of November 18, 1987.

Permit Information Needs: Refer to Appendix II of the *IDOT Drainage Manual*.

If the regulatory floodway delineation or base flood elevation will change due to the proposed project, the application will not be considered complete until the OWR has indicated conditional approval of the regulatory floodway map change and the completed request for the regulatory floodway map change has been submitted to FEMA.

Permit Name: General Permit for Open Burning of Landscape Waste Generated by Land Clearing Activities Necessitated by Road Construction Projects Included in the “Annual Program” and “Service Bulletins” of the Illinois Department of Transportation

Responsible Agency: Illinois Environmental Protection Agency

Responsible IDOT Unit: Central Office administers renewal of general permit; district processes Notice of Intent to use permit.

Legal Reference: 415 ILCS 5/39.5. Implementing rules in 35 Ill. Adm. Code 237, Subpart B.

Purpose: To impose appropriate conditions and restrictions on open burning of landscape waste to protect public health and welfare.

Applicability: Required for any proposed open burning of landscape waste generated from land clearing activities necessitated by road construction projects.

Permit Information Needs: A completed Notice of Open Burn form must be sent to the IEPA Air Permit Section not less than seven working days prior to each open burn. The Notice of Open Burn form must provide the following information:

1. Name and address of the contractor proposing the open burn.
2. The site location of the proposed open burn (address, county, township), sketch of the immediate vicinity of the proposed open burn site, and a printed map of the general area with the site and nearby features marked and distances to the features (e.g., structures, residences, populated areas, roadways, airports, lakes and waterways, hospitals, nursing homes, schools) indicated.
3. Schedule of the open burning activity (estimated duration and dates).
4. Estimated quantity of material to be burned.
5. IDOT construction contract number.
6. Authorized signature of person responsible for the open burn activity.

Permit Name: Supplemental Waste Stream Permit.

Responsible Agency: Illinois Environmental Protection Agency.

Responsible IDOT Unit: Application is prepared by the disposal facility on behalf of the firm handling waste disposal working for the prime construction contractor. BDE will assist as needed.

Legal Reference: Implementing rules in 35 Ill. Adm. Code 807.210 and 809.302b.

Purpose: To allow disposal facility to accept generated special waste.

Applicability: Permit is required to allow disposal facility to accept special waste generated by project involvement.

Permit Information Needs: The Supplemental Waste Stream Permit requires:

1. Receiving facility information, as follows:
 - a. Name and address of facility.
 - b. Name and address of applicant.
 - c. IEPA site code.
 - d. USEPA site code.
 - e. Facility contact name and telephone number.
2. Waste generator information, as follows:
 - a. Plant address.
 - b. Mailing address.
 - c. Generator IEPA code.
 - d. Generator USEPA code (if applicable).
 - e. Generator contact name and telephone number.
 - f. Generator SIC code.
 - g. Process/Operation code, name, and description.
 - h. Generic waste code and generic waste name.
 - i. Indication of ultimate disposition of treatment residuals or wastes.
3. Waste characteristic information, as follows:
 - a. Indication of whether waste is hazardous or non-hazardous.
 - b. USEPA hazardous waste number(s) (if applicable).
 - c. Results for paint filter test, penetrometer test.
 - d. Waste phase.
 - e. Transport frequency.
 - f. Waste class.
 - g. Flash point.
 - h. Percent Acidity.
 - i. Percent Alkalinity.
 - j. pH.
 - k. Percent solids.
 - l. Land Disposal Restricted Waste (if applicable).
 - m. Waste component names and percentages.

- n. Total concentrations of heavy metals and other specified constituents in waste.
- o. Summary of all available analytical results for waste.

Permit Name: *Resource Conservation and Recovery Act (RCRA) Permit.*

Responsible Agency: Illinois Environmental Protection Agency.

Responsible IDOT Unit: Application prepared by environmental firm working for prime construction contractor; BDE will assist as needed.

Legal Reference: Section 22.4 and Section 27 of the *Illinois Environmental Protection Act* (415 ILCS 5/22.4 and 27). Implementing rules in 35 Ill. Adm. Code 703.

Purpose: To apply appropriate conditions and restrictions for the operation of hazardous waste storage, hazardous waste treatment, or hazardous waste disposal operations.

Applicability: Applies to any project involvement with hazardous wastes in which the Department will conduct remediation activities involving storage of hazardous waste for more than 90 days.

Permit Information Needs:

1. Description of the activities conducted by the applicant that require it to obtain permits under RCRA.
2. Name, mailing address, and location of the facility for which the application is submitted.
3. Up to four SIC codes that best reflect the principal products or services provided by the facility.
4. The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity.
5. The name, address, and phone number of the owner of the facility.
6. A listing of all permits or construction approvals received or applied for under certain listed permit authorities.
7. A topographic map (or other map if a topographic map is unavailable) extending one mile (1.6 km) beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within 0.25 miles (400 m) of the facility property boundary.
8. A brief description of the nature of the business.
9. Additional specific information regarding facility location; facility layout; groundwater protection; processes to be used for treating, storing, and disposing of hazardous waste; types of wastes to be treated, stored, or disposed of.

Permit Name: Underground Storage Tank (UST) Permit.

Responsible Agency: Office of the State Fire Marshal (OSFM).

Responsible IDOT Unit: Application prepared by environmental firm working for prime construction contractor; BDE will assist as needed. Permit application must be approved by IDOT Chief Counsel prior to sending to OSFM.

Legal Reference: *Gasoline Storage Act* 430 ILCS 15. Implementing rules in 35 Ill. Adm. Code 731.

Purpose: To ensure that tank removal meets acceptable closure standards.

Applicability: A permit is required for removing any underground storage tank. (*Note: Permits for removing an UST can only be obtained by licensed UST removal contractors.*)

Permit Information Needs: The Underground Storage Tank Permit requires:

1. Name and address of owner of tank(s) and type of ownership.
2. Name and address of facility where tanks are located and type of facility.
3. Name and address of person, firm, or company performing work on tanks.
4. Number and size of tanks being removed and their status and age.
5. Reason for removal.
6. ESDA incident number (if tank is leaking).
7. Description of products that were stored in each tank.
8. Date tank was last used.
9. Description of tank construction materials.
10. Description of piping materials and type.

28-4 PROCEDURES/DOCUMENTATION FOR USE OF THE CATEGORICAL EXCLUSION NATIONWIDE SECTION 404 PERMIT

28-4.01 Background

For Categorical Exclusion (CE) actions involving the use of the CE nationwide permit (refer to BDE-IM for *Federal Register* notice containing current nationwide permits), the appropriate Corps district must be contacted and afforded an opportunity to review the proposal. This will ensure that the CE activities requiring a Section 404 permit will have only minimal adverse individual and cumulative impacts on the aquatic environment.

For CE actions that will involve discharges covered by another of the nationwide permits, the permit that is the least burdensome procedurally should be used.

28-4.02 Applicability

The following procedures are applicable to all State highway projects developed in conformance with FHWA procedures to obtain Federal funding (1) that are eligible to be processed as CEs, and (2) for which the responsible IDOT district wishes to pursue use of the CE nationwide Section 404 permit.

28-4.03 Procedures

28-4.03(a) General

Proposed CE projects that will involve an activity (or activities) subject to Section 404 permit requirements should be evaluated as early as practical by the affected IDOT district to assess the potential applicability of the CE nationwide permit. This evaluation should consider (1) whether the activity(ies) requiring a permit will involve placement of substantial amounts of fill that may result in more than minor water quality impacts, and (2) whether applicable nationwide permit conditions can be satisfied for the proposed activities. If additional information is needed concerning the environmental conditions for use of the nationwide permits (e.g., endangered species), coordination should be initiated with BDE to obtain the necessary information.

The results of these evaluations should be discussed with the FHWA Division Office and BDE representatives. These discussions and the determination of whether or not the CE nationwide permit is appropriate for a specific project should be documented either in the minutes of a coordination meeting or through other means (e.g., a memorandum to the file). A copy of this documentation should accompany the project report when it is submitted to BDE for approval to indicate the basis for the permit processing decision.

The CE permit can be used only in conjunction with projects being developed according to Federal procedures (i.e., projects developed as probable State-only funded actions and that, hence, may not conform to Federal procedures are not eligible for CE permit authorization from the FHWA). However, when use of the CE permit has been authorized for a project (and provided the Corps has not advised that it intends to seek assertion of its authority to require an

individual permit for the action), the CE permit will still be valid even if the project is subsequently programmed for State-only funding, provided there are no changes in the project that would result in more than minor water quality impacts or would conflict with the applicable nationwide permit conditions.

Construction-stage activities subject to Section 404 requirements (e.g., runarounds) can be covered under the CE permit authorization if they are identified and addressed when the project is coordinated for purposes of requesting CE permit approval. If such activities are subsequently proposed and were not addressed during the initial CE permit review, a separate permit review by the Corps will be necessary. As practical, districts should identify and address construction-stage activities during the initial CE permit review to eliminate the need for later separate review by the Corps.

28-4.03(b) CE Projects Potentially Eligible for Nationwide Permit

Categorical Exclusion projects are potentially eligible for processing under the CE nationwide permit when the IDOT district has determined they (1) will not involve more than minor water quality impacts (or that it is questionable whether more than minor water quality impacts will be involved) and (2) are such that the applicable permit conditions can be met.

In accordance with Corps Regulatory Guidance Letter 05-07, certain actions proposed for processing under the CE permit require submission of a preconstruction notification to the appropriate Corps district engineer prior to commencing the activity. Submission of the preconstruction notification must be accomplished in accordance with the requirements in the "Preconstruction Notification" general condition of the current nationwide permits, available on the Corps website. Preconstruction notification to the Corps is required for the following actions listed in 23 CFR 771.117 "Categorical exclusions":

- activities occurring under paragraphs:
 - + (c)(3) construction of bicycle and pedestrian lanes, paths and facilities;
 - + (c)(7) landscaping;
 - + (c)(9) emergency repairs under 23 USC 125; and
 - + (c)(12) improvements to existing rest areas and truck weigh stations; and
- all activities under paragraph (d).

The Corps districts will review each preconstruction notification and verify whether the activity meets the terms and conditions of the CE nationwide permit. Special conditions may be added to the CE permit verification to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. If the Corps district believes concerns for the aquatic environment or any public interest factor warrant further review, discretionary authority may be exercised on a case-by-case basis to require an individual permit.

Corps districts will provide a response, verifying whether the activity meets the terms and conditions for use of the CE permit, within the designated response period for the most recently

issued nationwide permits (as provided in the “Notification” general condition for the nationwide permits) or the appropriate regional condition. If the Corps district does not respond within the designated time, the activity qualifies for CE permit authorization.

For other potentially eligible CE projects that are not subject to the requirement for submitting formal preconstruction notification to the Corps, FHWA may approve use of the CE permit. Such projects should be discussed with BDE and FHWA representatives, and approval should be requested from the FHWA representative for use of the CE nationwide permit. If FHWA does not approve use of the nationwide permit, the procedures discussed in Section 28-4.03(c) for “ineligible” projects will apply. If FHWA approves the use of the permit, the district provides the responsible Corps district:

- documentation of FHWA’s approval,
- a sketch and brief description of the work requiring a 404 permit,
- an indication of the type and approximate quantity of fill involved, and
- a copy of the biological information received in response to the environmental survey request for the action.

A form has been developed for documenting CE permit authorizations by FHWA, issued via a BDE Technical Environmental Memorandum. Upon receipt of FHWA’s approval of the CE permit for a project, the district provides a copy of the signed form, with supporting information as indicated above, to the responsible Corps district and to BDE. *Some Corps districts may require the submittal of a completed permit application form to provide the supporting information.* In addition, when the discussions with FHWA leading to authorization of the CE permit involve substantial problems or conditions for permit authorization, include a copy of the minutes of the meeting, or other documentation of the discussions, as a part of the supporting information submitted to the Corps and BDE.

Upon receiving the necessary Section 401 water quality certification from the IEPA, the action may proceed under the nationwide permit authorization. For CE permit authorizations received from the Corps or FHWA, information concerning the need to comply with the permit conditions should be incorporated into the district’s procedures for ensuring follow-through on commitments. This will ensure that those having later project involvements (including contractors) will be aware of the applicable commitments.

28-4.03(c) CE Projects Ineligible for Nationwide Permit

If the Corps advises that an individual permit will be required, BDE should be advised of this action either by copy of the correspondence from the Corps or by memorandum.

If the IDOT district, BDE, or FHWA determines that a CE-type project activity subject to Section 404 permit requirements will involve more than minor water quality impacts, or that one or more of the conditions for the nationwide permit cannot be met, application to the Corps for an

individual or, where appropriate, a regional permit will be necessary for the activity. For CE projects that the district, BDE, or FHWA determines will require an individual permit, the transmittal letter to the Corps accompanying the permit application should note that the project will be processed as a CE for compliance with NEPA.